

**THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)
APPLICATION/AGREEMENT****Agreement between State Agency and TEFAP Agency for
Reimbursement and foods furnished by the United States Department of Agriculture
For Fiscal Year 2005****DEFINITIONS OF TERMS:**

In accordance with the Agreement between the State of Michigan, Department of Education, and the United States Department of Agriculture, this Agency hereby makes application on behalf of itself to act as distributor for foods donated by the United States Department of Agriculture, (hereinafter referred to as USDA) to the Michigan Department of Education, Food and Nutrition Program (hereinafter referred to as the State Agency) for distribution to eligible recipients in a given area, and agrees to the following terms and conditions.

THE TEFAP AGENCY AGREES TO:

1. Accept the responsibility for the distribution of USDA donated foods provided through the State Agency at agreed upon distribution points. All such distribution activities will conform to USDA program regulations, 7CFR Parts 250 and 251, as amended.
2. Serve as a distributing agent to all eligible recipients and coordinate such distribution in the geographic areas served by the Agency.
3. Provide or cause to be provided proper facilities and arrangements for the acceptance, storage and handling of such food commodities in accordance with USDA program regulations. Agencies receiving direct USDA shipments must distribute the products within 3 months of date of receipt in a safe, sanitary manner.
4. Accept the responsibility for the proper management and control of all activities pertaining to the distribution of food commodities in the Agency's geographical service area. The designated Agency representatives shall be authorized to sign on behalf of the Agency, requests for commodities, reports and other documents necessary in the operation of the food distribution program, as approved by the State Agency.
5. Accept and provide safe storage for frozen product.
6. Provide USDA donated foods to eligible recipients at no cost to the recipients. The Agency understands that USDA donated food is available for use, only to the extent that eligible persons are served.
7. Maintain a system for inventory and distribution procedures that documents USDA donated food is provided only to eligible recipients.
8. Confine distribution of food commodities received from the State Agency to persons, groups, agencies or other recipients determined to be eligible in accordance with instructions issued by the State Agency. Such distribution shall NOT be in excess of the maximum rates of distribution established by the State Agency, unless otherwise authorized in writing.
9. Permit representatives of USDA and/or the State Agency to:
 - a. Inspect facilities and local sites utilized in the storage and distribution of USDA donated foods;
 - b. Review and copy records pertaining to storage and distribution activities; and
 - c. Conduct audits.
10. Submit the following reports by the dates indicated to the State Agency:
 - a. Food Receipt/Distribution Report (SM-4699),
 - b. Losses and Gains Report (SM-4742-A); and
 - c. Disposal Authorization (SM-4742-B) are **due by the 10th of the month following the distribution month and/or receipt of commodities.**
 - d. Cost Report (SM-4699-C) is **due by the 10th of the month following the end of each quarter.**

THE ENDING INVENTORY MUST BE THE ACTUAL PHYSICAL COUNT.

11. Distribute USDA food commodities in quantities and/or manner to discourage waste, deterioration or misuse.
12. Furnish proper storage and facilities to properly safeguard against theft, spoilage and other losses as recommended by the State Agency for all USDA commodities requested and accepted by the Agency. All storage facilities must be licensed by the Michigan Department of Agriculture. The Agency agrees to install thermometers, suitable ventilation, provide specific temperatures for commodities and use all product on the basis of the First In, First Out (FIFO) inventory system. If recommended storage is not available within the Agency's own buildings, it will be permissible to remove the commodities from their premises for the purpose of providing proper storage in local commercial storage facilities or with merchants who have such storage, provided the Agency makes arrangements with said facilities or merchants to maintain a current record of receipts, withdrawals and balances and be licensed by the Michigan Department of Agriculture. Under no circumstances may donated commodities be stored in private homes.
13. Maintain complete and accurate records pertaining to all transactions relating to the receipt, disposal and inventory of commodities, including records with respect to the receipt and disbursement of funds arising from operation of the distribution program. Such records shall be retained by the Agency for a period of three (3) years from the end of the fiscal year to which they pertain and shall be available for inspection by representatives of the State Agency and/or the USDA at a reasonable time or place.
14. Make available at any reasonable time to the State Agency and/or federal representatives of the USDA for audit purposes, all records, including financial records and reports pertaining to the distribution of commodities.
15. Assume liability for any losses or damage to a food commodity caused by fire, water, wind, theft, rodents, or infestation, **THROUGH FAULT OR NEGLIGENCE BY THE AGENCY**; or failure to provide proper storage, care of handling while in the warehouse, also incurred during transportation and distribution to recipients; for diversion to ineligible recipients; and will reimburse the State Agency upon receipt of a statement indicating the value of the food commodity, which is furnished by USDA.

THE MICHIGAN DEPARTMENT OF EDUCATION, FOOD AND NUTRITION PROGRAM AGREES TO:

1. Provide appropriate and timely information, clarification and/or technical assistance in the following areas:
 - a. Eligibility requirements for recipients
 - b. Distribution methods and procedures
 - c. All amendments or information pertaining to USDA rules and regulations and the Michigan State Plan of Operation
 - d. Financial, inventory and distribution reporting requirements
 - e. Allowable costs
 - f. Reimbursement procedures
 - g. Accounting and audit requirements/exceptions.
2. Provide advance notice of type and amount of USDA foods which will be available for distribution by the Agency and provide timely information on changes in the notices.
3. Provide a suggested issuance rate for food to be distributed.
4. Provide reimbursement payments to the Agency. Reimbursement payments will be made quarterly and will include the cost incurred to pay for the delivery of USDA food from state contracted warehouses. Payment rate will be established by the State Agency based on the number of households being served by the Agency. All reimbursement payments will be the lessor of the costs reported by the Agency and the maximum reimbursement rate.

OTHER:

1. Political Activity Prohibited: None of the funds, materials, property or services made available because of this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
2. Religious Activity Prohibited: There shall be no religious instruction or proselytizing as part of, or in connection with, the performance of this Agreement.
3. General Provisions:
 - a. Merger or Integration: This Agreement constitutes the entire Agreement between the State Agency and the Agency with respect to the subject matter hereof and there are no other or further written or oral understanding or agreements with respect hereto.

3. General Provisions: (Continued)

- b. Modification: No variation or modification of this Agreement, and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the State Agency and the Agency.
- c. Assignment of Delegation: No assignment or delegation of this Agreement may be made, in whole or in part, without the written consent of the State Agency or the Agency;
- d. Termination: The State Agency or the Agency may terminate this Agreement by giving thirty (30) days notice in writing to the other party. The State Agency may cancel this agreement immediately upon receipt of evidence that the terms and conditions thereof have not been fully complied with by the Agency. Subject to such notice of termination or cancellation of the Agreement, the Agency agrees to comply with the instructions of the State Agency, either to: 1) distribute all remaining inventories of USDA commodities in accordance with the provisions of this Agreement; or 2) release USDA commodities to the State Agency at no cost.
- 4. Indemnification: Both parties shall indemnify, defend and hold harmless each other against any and all expense and liability of any kind which the parties may sustain, incur or be required to pay arising out of this Agreement provided, however, that the provisions of this paragraph shall not apply to liabilities or expenses caused by, or resulting from, the acts or omissions of either party or any of their officers or employees.
- 5. Confidentiality: The use or disclosure of information concerning services, applicants, or recipients obtained in connection with the performance of this Agreement shall be restricted to purposes directly connected with the Administration of the services provided through this Agreement.
- 6. Comply with all requirements imposed by or pursuant to the Civil Rights Act of 1964 and the USDA Regulations (7CFR Part 15), including any subsequent amendments, issued to effectuate that Act. Compliance will be consistent with the objectives that no person in the United States shall, on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation and marital or family status, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity of the Agency which assistance is provided by the USDA. The Agency agrees to be obligated by this assurance as long as it receives assistance hereunder or retains possession of the State Agency. Should the Agency fail to comply with this assurance, the USDA or the State Agency shall have the right to seek its enforcement by judicial or any other means authorized by law. Except that any termination of this Agreement for noncompliance with Title VI of the Civil Rights Act of 1964 shall be in accordance with applicable laws and regulations.
- 7. Right to Know Act (Act 80 of 1986) – The “Right to Know Act” is intended to provide protection and information to employees who encounter hazardous substances in the workplace. The manufacturing industry must comply with requirements of labeling containers of hazardous materials, provide access to material safety data sheets, worker education, and training. Products having hazardous and/or potentially hazardous substances must be labeled accordingly.
- 8. The following item shall be an addendum to this Agreement:

The Michigan TEFAP State Plan of Operation (available upon request)

TERM OF AGREEMENT:

The period of this Agreement is **October 1, 2004, to September 30, 2005 and any additional periods agreed to by the State Agency and the Agency.**